Supreme Court, U.S.
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No. 85-1216

IN THE
Supreme Court of the United States
OCTOBER TERM, 1985

JOHN D. O'CONNELL,
Petitioner,

v.

MARYLAND STEEL ERECTORS, INC., *et al.*,
Respondent.

OPPOSITION TO THE PETITION FOR WRIT OF CERTIORARI TO THE DISTRICT OF COLUMBIA COURT OF APPEALS

James A. Welch
(Counsel of Record)

WELCH, MURPHY & WELCH
Suite 703
Wheaton Plaza North Building
Wheaton, Maryland 20902
(301) 946-4940

Attorney for Respondent

February 18, 1986

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QUESTIONS PRESENTED

Whether a tort action brought by a worker against a third party, on a negligence theory, may proceed after the Statute of Limitations in the District of Columbia Workmen's Compensation Act has run.

PARTIES TO THE PROCEEDINGS

The parties to the proceedings below in the District of Columbia Court of Appeals were Petitioner John D. O'Connell, Respondent Maryland Steel Erectors, Inc. and Steele and Morooney, Inc. which was a third-party defendant and appellee in the Courts below.

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Appendix D – Order of Superior Court Judge Bacon Dismissing Claims of O'Connell 25a

IN THE

Supreme Court of the United States

OCTOBER TERM, 1985

No. 85-1216

JOHN D. O'CONNELL,

Petitioner,

v.

MARYLAND STEEL ERECTORS, INC., *et al.*,

Respondent.

OPPOSITION TO THE PETITION FOR WRIT OF CERTIORARI TO THE DISTRICT OF COLUMBIA COURT OF APPEALS

Respondent, Maryland Steel Erectors, Inc., respectfully requests that this Court deny Petitioner's request for Writ of Certiorari to review the Decision and Order of the District of Columbia Court of Appeals dismissing Petitioner's Appeal from an Order of Summary Judgment and denying a Petition for Rehearing and/or Suggestion for Rehearing En Banc and Order denying a Motion to Stay the issuance of mandate. 495 A.2d 1134 (D.C. 1985), reh'g denied, No. 82-1486 (D.C. Oct. 21, 1985), (Order filed February 4, 1986).

OPINIONS BELOW

On the day of trial, a District of Columbia Superior Court Judge granted Summary Judgment in favor of the defendant Maryland Steel Erectors, Inc. on the authority of this Court's holding in *Rodriguez v. Compass Shipping Co.*, 451 U.S. 596 (1981). Appendix D.

Petitioner appealed to the District of Columbia Court of Appeals which affirmed the granting of Summary Judgment. Appendix C. The District of Columbia Court of Appeals has denied Petitioner's request for Rehearing En Banc (Appendix B) and has denied Petitioner's Motion to Stay issuance of mandate. Appendix A.

JURISDICTION

Petitioner invokes jurisdiction of this Court pursuant to 28 U.S.C. §1257(3) (1976). Respondent disputes this Court's jurisdiction to hear this case and contends that the legal issues presented below involves application of local laws of the District of Columbia and does not involve a federal question that should concern this Court. This issue regarding jurisdiction is more fully set out in Respondent's Reasons for Denying the Petition below.

STATEMENT OF THE CASE

The Petitioner, John D. O'Connell, was injured during the course of his employment and was awarded Workmen's Compensation benefits due to his injuries. Eight months after he was awarded the benefits, Petitioner commenced this civil action against Respondent Maryland Steel Erectors, Inc. in the Superior Court for the District of Columbia.

On December 16, 1981, the trial court granted Respon-

dent's Motion for Summary Judgment as Petitioner had not commenced his action within the required six-month Statute of Limitations under 33 U.S.C. §933(b). The Court based its decision on *Rodriguez v. Compass Shipping Co.*, 451 U.S. 596 (1981). In 1984, while Petitioner appealed the trial court's decision, Congress amended the Federal Longshoremen's and Harborworker's Compensation Act, §933(b) Pub. L. No. 98-426, 98 Stat. 1639 (1984) which would have allowed Petitioner to proceed with his cause of action under the Federal Act, if applicable in the District of Columbia.

On July 5, 1985, the District of Columbia Court of Appeals upheld the Superior Couret's entry of Summary Judgment in favor of the Respondent. The Court held that the 1984 Amendments to the Federal Longshoremen and Harborworkers' Act are inapplicable to the District of Columbia Workmen's Compensation Act as the District of Columbia's Act was a purely local one and that Congress had not explicitly applied the Amendments to the District of Columbia, which it was empowered to do. The Court further rejected Petitioner's claim that *Rodriguez* was inapplicable to the present action, and, therefore, upheld the Summary Judgment.

The District of Columbia Court of Appeals sitting *en banc*, denied Petitioner's Petition for a Rehearing En Banc on October 21, 1985. On February 4, 1986, the District of Columbia Court of Appeals issued a Per Curiam Order denying Petitioner's Motion to Stay issuance of the mandate.

REASONS FOR DENYING THE PETITION

Respondent respectfully submits that the legal issues presented below involves application of local law and not

a federal question that should concern this Court in Review. In support of its Petition, Respondent states as follows:

I. THE LEGAL ISSUES RAISED IN THE CASE BELOW INVOLVE THE APPLICATION OF LOCAL LAW OF THE DISTRICT OF COLUMBIA REGARDING TORT ACTIONS AGAINST THIRD PARTIES UNDER THE DISTRICT OF COLUMBIA WORKER'S COMPENSATION ACTS. D.C. CODE §36-501 (1973).

The underlying suit upon which the Petition is based is a tort action for negligence. Such a cause of action arises under the common law of the District of Columbia. Petitioner also was awarded Worker's Compensation benefits out of the same incident, therefore, his remedies are also controlled by the Longshoremen and Harborworkers' Compensation Act, 33 U.S.C. §901, *et seq.* (1982) (LHWCA) as made applicable to the District of Columbia by the District of Columbia Worker's Compensation Act, D.C. Code §§36-501, *et seq.* (1973). Respondent was granted Summary Judgment under the Worker's Compensation Act as Petitioner had not commenced his action within the prescribed Statute of Limitations. Petitioner argued that Amendments to the Federal LHWCA by Congress in 1984[1] were applicable to the local District of Columbia Worker's Compensation Act. The District of Columbia Court of Appeals rejected Petitioner's arguments and affirmed Summary Judgment by ruling that the D.C. Act was one of local application and, therefore, the Congressional Amendments to the Federal Statute were inapplicable in the District of Columbia.

Such a holding is within line with several United States Court of Appeals and District of Columbia Court of Ap-

[1]Pub. L. No. 98-426, 98 Stat. 1639 (1984).

peals cases which have held that the District of Columbia Worker's Compensation Act is a Congressional enactment of a local District of Columbia Statute dealing exclusively with local matters. *Gudmondson v. Cardillo,* 75 U.S. App. D.C. 230, 126 F.2d 521 (1942); *Director of Wkrs' Comp. v. National Van Lines, Inc.,* 198 U.S. App. D.C. 239, 613 F.2d 972 (1979). *District of Columbia v. Greater Washington, (D.C.,* App.) 442. A.2d 110, hearing *en banc* denied, 445 A.2d 960 (D.C. 1982), *cert. denied,* 460 U.S. 1016 (1983). Furthermore, the District of Columbia Court of Appeals has held that the District of Columbia City Council was within its legislative authority under the District of Columbia Self-Government and Governmental Reorganization Act, D.C. Code §§1-201 *et seq.* (1981) when it enacted the District of Columbia Workmen's Compensation Act of 1979, D.C. Code §§36-307 *et seq.* (1981) and repealed existing Workmen's Compensation Statutes applicable to the private sector in the District of Columbia, *Ibid.* Therefore, the District of Columbia Court of Appeals was correct in its holding and was following precedent of United States Court of Appeals for the District of Columbia and its own precedent.

This Court has several times recognized its policy not to interfere with local rules of law fashioned by the Courts of the District of Columiba. *Miller v. United States,* 78 S. Ct. 1190, 357 U.S. 301, 2 L.Ed.2d 1332 (1958). *Pernell v. Southall Realty,* 94 S. Ct. 1723, 416 U.S. 363, 40 L.Ed.2d 198 (1974). *Fisher v. United States,* 66 S. Ct. 1318, 328 U.S. 463 (1946). Respondent urges this Court to apply this policy regarding this case which is one of local statutory construction.

II. PLAINTIFF HAS NO STANDING TO BRING THE PRESENT ACTION AS THE STATUTE OF LIMITATIONS HAS RUN AS DECIDED BY THIS COURT IN RODRIGUEZ V. COMPASS SHIPPING CO.

Petitioner relies upon the 1984 Amendment to the LHWCA to resurrect his cause of action. However, since the 1984 amendments apply only to the Fedreal LHWCA Act, the District of Columbia Court of Appeals upheld summary judgment against Petitioner as he had not filed his action within the statutory period. The Court relied upon *Rodriguez v. Compass Shipping Co.*, 451 U.S. 596 (1981) which held the running of the six-month period barred any suits not commenced by the employer or his subrogee. Petitioner argued that *Rodriguez* should not be read retroactively and that the Court of Appeals must follow the precedent of one local case which allowed a suit to commence beyond the six-month limit. *Potomac Electric Power Co. v. Wynn*, 120 U.S. App. D.C. 13, 343 F.2d 295 (1964).

The District of Columbia Court of Appeals did not violate its self-imposed decision to use decisions of the United States Court of Appeals for the District of Columbia made prior to 1971 as precedent. *M.A.P. v. Ryan*, 285 A.2d 310 (D.C. 1971). The Court noted that it has applied *Rodriguez* in two other cases thus not violating precedent. *Dodson v. Washington Automotive Co.*, 461 A.2d 1020 (D.C. 1983). *Milligan v. Brian Construction Co.*, 485 A.2d 593 (D.C. 1984). Also, the Court's retroactive application of *Rodriguez* was appropriate within that Court's and this Court's guidelines for such application. *United States v. Johnson*, 457 U.S. 537 (1982).

The District of Columbia Court of Appeals decision on how to use precedent is, once again a local rule. Respon-

dent urges this Court to follow its past decisions not to interfere with such rule making.

III. THE COURT OF APPEALS' DECISION CORRECTLY CONSTRUED THE APPLICABLE STATUTES.

Finally, the well-reasoned decision of the Court of Appeals is in any event correct and, for that reason alone, the petition should be denied.

In reaching its decision that the 1984 LHWCA Amendments are not applicable to 1982 Act cases, the Court of Appeals began its analysis by noting that pre-1982 compensation cases in the District "deriv[e] entirely from the [1928 Act]." Pet. App. at 14a. After observing that the 1982 Act made "the provisions" of the LHWCA, "including future amendments thereto," applicable to District nonmaritime employees, the Court further noted that "the 1928 Act – one of purely local application – was expressly repealed by an act passed by the District Council in 1980 [*i.e.*, the New D.C. Act]," Pet. App. at 14a.[2]

That repeal, the Court held, was of crucial importance in determining whether the 1984 LHWCA Amendments applied to this and other 1982 Act cases; for "[h]ad it not been for the repealer, the 1928 act would indeed have incorporated those amendments, including the revisions of Section 33." Pet. App. at 17a. The *repeal* of the 1928 Act – including its provision incorporating future LHWCA Amendments – changed the analysis, however: "as the 1928 Act was no longer on the books, what Congress subsequently did to the [LHWCA] did not affect any rights created by [the 1928 Act]." Pet. App. at 17a.

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[2]The repeal of the 1928 Act was contained in Section 46 of the New D.C. Act. *See* Pet. App. at 14a, n.12.

Workers injured before July 26, 1982 (the effective date of the 1982 Act's repeal), however, are "still covered" by the 1928 Act by virtue of the applicable D.C. saving statute, 1 U.S.C. § 109.[3] Pet. App. at 16a. This is because, as the Court of Appeals stated, the saving statute operates to "preserv[e]" legitimate claims of workers "incurred" under the 1928 Act prior to its repeal. Pet. App. at 17a. The Court of Appeals emphasized that the crucial language in the saving statute provides that a repealed statute is to be "treated" as still in force " *'for the purpose of sustaining any proper action.'* " Pet. App. at 16a (quoting 1 U.S.C. § 109 (emphasis added by the Court). Hence, inasmuch as Petitioner had no "proper action" in tort under the 1928 Act more than six months after his compensation award, the Court of Appeals concluded that the saving statute could not "save" a right that Petitioner *never had.* In noting this key limitation on the scope of the saving statute, the Court of Appeals squarely applied this Court's analysis of the saving statute in *De La Rama Steamship Co. v. United States,* 344 U.S. 386, 389 (1953), wherein the Court underscored the "precise purpose" of the saving statute, *i.e.,* preserving "*existing* rights." (Emphasis added).[4]

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[3]The saving statute is reproduced at Pet. at 4. *See also* Pet. App. at 16a. As a general act of Congress, Section 109 is applicable to the District by virtue of D.C. Code § 49-301. Pet. App. at 16a, n.16.

[4]That a saving provision preserves only existing rights and does not serve as a means for creating new rights is a well-established principle of law. *See, e.g., Knickerbocker Ice Co.* v. *Stewart,* 253 U.S. 149, 162 (1920); *The Irresistable,* 20 U.S. (7 Wheat.), 551, 551-52 (1822); *Solomon* v. *United States,* 276 F.2d 669, 673 (6th Cir.), *cert. denied,* 364 U.S. 890 (1960). *See also Marquardt* v. *Stark,* 239 Minn. 107, 58 N.W.2d 273, 277 (1953); *Shanken* v. *Township of Upper Moreland,* 203 Pa. Super. 323, 201 A.2d 249, 252 (1964).

The Court of Appeals did not end its inquiry with the intent of the Council and Congress in repealing the 1928 Act; it also examined the legislative history of the 1984 Amendments to determine whether Congress intended those Amendments to affect local D.C. law notwithstanding the 1928 Act's repeal. On this issue the Court determined that there is *no evidence* that Congress intended that its revisions to the *national* LHWCA would affect cases under the repealed 1928 Act as well. Pet. App. at 20a-23a.[5] The Court found no language in the 1984 Amendments referring to the District of Columbia or to the 1928 Act specifically. Pet. App. at 20a. Moreover, the Court's "examination of the 1928 act and its legislative history [revealed] that Congress, in revising the Longshore statute, focused attention entirely upon difficulties encountered by maritime employers and employees." Pet. App. at 22a.[6] The Court further found that a "central purpose" of the Amendments was to remove nonmaritime employees from the national LHWCA's coverage. Pet. App. at 22a. The Court therefore concluded that it would be "passing strange" to hold that Congress intended the Amendments to apply *sub silentio* to all land-based District employees

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[5]Contrary to Petitioner's assertion (Pet. at 12-14), nothing in the Court of Appeals' decision suggests that Congress could not have legislated for the District and revived the 1928 Act had it chosen to do so. Nor does anything prevent Congress from so acting today: both the Constitution and the Home Rule Act expressly reserve to Congress plenary legislative power over the District. U.S. Const. art. I, § 8, cl. 17; D.C. Code § 1-206. The Court of Appeals simply held that Congress did not exercise its local legislative powers in this instance.

[6]Petitioner's reliance on a post-enactment letter to the editor of the *Washington Post* by a Member of Congress as support for the proposition that Congress intended the 1984 Amendments to affect local District law (Pet. at 12; Pet. App. at 27a-28a) is completely misplaced. This Court has repeatedly stated that post-enactment statements of legislators are unreliable guides to legislative intent. *E.g., Regional Rail Reorganization Act Cases*, 419 U.S. 102, 132 (1974).

previously covered by the repealed 1928 Act. Pet. App. at 22a.[7]

Thus, the Court of Appeals concluded that the City Council's and Congress' repeal of the 1928 Act carried out the plain meaning of the word "repeal," *i.e.*, that further amendments to the national LHWCA would no longer apply to local worker-compensation matters in the District of Columbia. The Court also concluded that Congress did not intend to override that repeal through the 1984 LHWCA Amendments and once again become a local legislature for such matters. These conclusions of the Court of Appeals turn on strictly local questions, are consistent with the decisions of all other courts on those questions,

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[7]Petitioner argued in the court below that certain regulations promulgated by the Department of Labor purporting to apply the 1984 LHWCA Amendments to 1928 Act *compensation claim* proceedings constitute persuasive contrary authority. There are several responses to this argument. First, as the Court of Appeals held, the question whether the 1984 Amendments apply to 1928 Act cases is a purely legal one as to which the Department has no special expertise and so deserves minimal deference. *See* Pet. App. at 21a-22a. *Accord, e.g., FTC* v. *Colgate-Palmolive Co.*, 380 U.S. 374, 385 (1965). Second, the Department's analysis of this issue blatantly flouts not only the Court of Appeals' decision, but also decisions of several judges of the United States District Court for the District of Columbia and at least two of the Department's own Administrative Law Judges. *See* 51 Fed. Reg. 4270 (Feb. 3, 1986); note ____, *supra*. That an agency would refuse to follow applicable judicial decisions by pronouncing them "unsound" in a Federal Register notice (51 Fed. Reg. at 4272) is, to say the least, surprising. Respondents suggest that it is *the courts* which ultimately interpret the law and ultimately determine the soundness of agency opinions, not the other way around. Finally, even assuming that the Department's opinion on this issue should be given any weight, the Department's jurisdiction over 1928 Act matters is plainly limited to deciding *compensation claim* disputes. Its regulations necessarily apply *only* in that context and are irrelevant to the instant question of *third-party causes of action* under the 1982 Act.

present no issues of national importance, and, moreover, are clearly correct. They do not merit review by this Court.

CONCLUSION

Wherefore, the Respondent, Maryland Steel Erectors, Inc. prays that this Court deny the Petition for a Writ of Certiorari.

Respectfully submitted,

James A. Welch
(Counsel of Record)

WELCH, MURPHY & WELCH
Suite 703
Wheaton Plaza North Building
Wheaton, Maryland 20902
(301) 946-4940

Attorney for Respondent

February 18, 1986

APPENDIX A

DISTRICT OF COLUMBIA COURT OF APPEALS

No. 82-1486
JOHN D. O'CONNELL, Appellant,
v. CA14192-79

MARYLAND STEEL ERECTOR, INCORPORATED, et al., Appellees.

BEFORE: Nebeker and Fertten, Associate Judges, and Reilly, Senior Judge.

ORDER

On consideration of the motion to stay issuance of mandate, and the joint opposition of appellee, et al., thereto, it is

ORDERED that the motion is denied and the Clerk is directed to issue the mandate forthwith. Unlike cases in which a judgment for damages or for an equitable or agency remedy is affirmed, refusal of the court to stay the mandate in this case does not impose any harm upon movant

or prejudice in any way his prospects for favorable action in a certiorari application.

PER CURIAM

Copies to:

William C. Burgy, Esquire
2000 L Street, N.W.
Suite 700

Walter J. Murphy, Jr., Esquire
Wheaton Plaza North Building
Suite 703
Wheaton, MD 20902

Vincent H. Cohen, Esquire
Walter A. Smith, Jr., Esquire
Robert B. Cave, Esquire
815 Connecticut Avenue, N.W.
Washington, D.C. 20006

Gary W. Brown, Esquire
1625 Eye Street, N.W.
Suite 512
Washington, D.C. 20006

ebp

APPENDIX A

DISTRICT OF COLUMBIA COURT OF APPEALS

No. 82-1486
JOHN D. O'CONNELL, Appellant,
v. CA14192-79

MARYLAND STEEL ERECTOR, INCORPORATED, et al., Appellees.

BEFORE: Pryor, Chief Judge; *Nebeker, Mack, Newman, *Ferren, Belson, Terry, and Rogers, Associate Judges; *Reilly, Chief Judge, Retired.

ORDER

On consideration of appellant's petition for rehearing and/or rehearing en banc, and the resposnes thereto, it is

ORDERED by the merits division* that the petition for rehearing is denied; and it appearing that the majority of the judges of this court has voted to deny the petition for rehearing en banc, it is

FURTHER ORDERED that the petition for rehearing en banc is denied.

PER CURIAM

Associate Judges Newman and Rogers would grant rehearing en banc.

Copies to:

Honorable Sylvia Bacon

Clerk, Superior Court

Karl N. Marshall, Esquire
2000 L Street, N.W., Suite 700
Washington, D.C. 20036

Walter J. Murphy, Jr., Esquire
703 Wheaton Plaza North Bldg.
Wheaton, MD 20902

Gary W. Brown, Esquire
1625 K Street, N.W.
Washington, D.C. 20036

Robert B. Cave, Esquire
8915 Conn. Ave., N.W.
Washington, D.C. 20006

District of Columbia
Court of Appeals
Filed Oct 21 1985

APPENDIX C

DISTRICT OF COLUMBIA COURT OF APPEALS
No. 82-1486
John D. O'Connell, Appellant,

v.

Maryland Steel Erectors, Inc., et al, Appellees

Appeal from the Superior Cout
of the District of Columbia

(Hon. Sylvia Bacon, Trial Judge)

(Reargued April 1, 1985 Decided July 5, 1985)

Peter J. Vangsnes for appellant, *William C. Burgy* and *Karl N. Marshall* were on the briefs, for appellant.

Walter J. Murphy, Jr., with whom *Hugh W. Farrell* entered an appearance, for appellee Maryland Steel Erectors, Inc.

Gary W. Brown, entered an appearance for appellee Steele & Moroney, Inc.

Walter A. Smith, Jr., with whom *Vincent H. Cohen* and *Robert B. Cave* were on the briefs for *amicus*, Washington Metropolitan Area Transit Authority.

Before Nebeker and Ferren, *Associate Judges*, and Reilly, *Chief Judge, Retired.*

Reilly, *Chief Judge, Retired:* This is an appeal from the dismissal of an action for negligence brought by a construction worker against the corporate owner of a rotating crane on a building project where he had suffered chest and shoulder injuriesa. Eight months prior to commencing such action, he had been formally awarded workmen's

compensation pursuant to a disability claim filed against his own employer, the contractor who had hired him to work on the site. At the time of the injury, the District of Columbia workers' compensation statute incorporated by reference the provisions of the Longshoremen's and Harbor Workers' Compensation Act of 1927, as amended, 33 U.S.C. § 901 *et seq.*, one of which, Section 33(b)[1] allowed a disability claimant, even after accepting workmen's compensation, to sue a person other than his employer within six months after the award. If he failed to do so, his right of action under this subsection was assigned to his employer.

In the instant case, as appellant had let the six-month deadline elapse before beginning his action, the trial court granted a motion to dismiss, observing that in *Rodriguez v. Compass Shipping Co.*, 451 U.S. 596 (1981), it was established that the running of the six-month period barred any suits not initiated by the employer or his subrogee.[2]

[1]33 U.S.C. § 933(b) (1982). This particular subsection was one of the amendments passed by Congress in 1959 to the Longshore Act. Prior to its enactment, a disabled worker was confronted with a choice of remedies. He could file a claim against his own employer for statutory compensation, irrespective of negligence, or sue a third party whose conduct caused the injury – but he could not do both. If the worker elected and received compensation, the employer or his insurance carrier under subrogation principles then could sue a third person deemed responsible for the accident for reimbursement.

[2]In *Rodriguez*, the Supreme Court had granted certiorari to resolve a conflict between the Courts of Appeal of the Second and Fourth Circuits between the Courts of Appeal of the Second and Fourth Circuits on the interpretation of Section 33(b) of the Act. Just eight days after the Second Circuit had decided that when injured longshoremen failed to bring suit within six months, the employer to whom their claims had been asssigned thereafter had the exclusive right to pursue third-party claims, the Fourth Circuit issued an opinion to the contrary in *Caldwell v. Ogden Sea Transport, Inc.*, 618 F.2d 1037 (4th Cir. 1980). Its holding was that if the assignee chose not to sue, the disabled workers by appropriate pleadings could gain reassignment of their cause of action.

Citing *Rodriguez*, we reached the same conclusion in two similar cases, *Dodson v. Washington Automotive Co.*, 461 A.2d 1020 (D.C. 1983) and *Milligan v. Brian Construction Development Co.*, 485 A.2d 593 (D.C. 1984). We are now urged to vacate the order of the trial court and remand the case for trial on the grounds that (1) *Rodriguez* is not controlling with respect to litigation commenced before the release of that opinion, and (2) in any event a Congressional amendment to the Longshore statute (which became law during the pendency of this appeal) has breathed a new life into the dismissed action. Deeming neither of the grounds urged for reversal as persuasive, we affirm.

I

In developing his first ground, appellant asserts that the motions court in this case should have deferred to *Potomac Electric Power Co. v. Wynn*, 120 U.S. App. D.C. 13, 343 F.2d 295 (1964). He points out that this decision of the United States Court of Appeals for this circuit was not specificallay disapproved by the Supreme Court until it handed down its *Rodriguez* opinion in 1981, more than a year after appellant had begun his action in the Superior Court. In the *Wynn* cae, the plaintiff waited for sixteen months after being awarded compensation benefits before filing an amended complaint against PEPCO. The appellate court affirmed the denial of a motion to dismiss. It recognized that after the six-month period had run, the right to recover the compensation award was assigned to the employer who had paid it, but nevertheless that if such assignee then failed to exercise such right — for any reason — the injured employee was not precluded from suing.

In arriving at this conclusion — seemingly at odds with the actual wording of the statutory language interpreted —

the court cited *Czaplicki v. The Hoegh Silvercloud,* 351 U.S. 525 (1956), a case which antedated the 1959 amendments to Section 33.[3] In *Czaplicki,* the petitioner's rights of action against third parties were assigned by the act to his employer after he accepted compensation under an award. The employer's insurer, Travelers Insurance Company, was in turn subrogated to those rights. Travelers, however, was also the insurer of one of the third parties subject to suit. Thus, facing additional liability if such right of actin was successfully asserted, it had no reason to bring suit. The Supreme Court held that where the assignee's interests are in conflict with those of the employee, the latter had a cause of action against a negligent third party, despite the prior assignment.

But by holding that an employee can bring suit against a third party whenever the employer-assignee fails to do so, the *Wynn* decision went considerably beyond *Czaplicki.* Professor Larson described *Wynn* as the "most extreme extension" of *Czaplicki.*[4] It also seems that the *Wynn* opinion missed the point of the 1959 amendment to Section 33, which was to protect employees in *Czaplicki* situtions by affording them a right to sue independently for a six-month period.

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[3]Section 33(b), 33 U.S.C. *(b), reads as follows:

> Acceptance of such compensation under an award in a compensation order filed by the deputy commissioner shall operate as an assignment to the employer of all rights of the person entitled to the compensation to recover damages against such third person unless such third person commence within six months after such award.

[4]2a A. A. LAWSON'S, WORKMEN'S COMPENSATION LAW § 75.47 at 14.555(1982).

Appellant's position, however, is that irrespective c whether or not *Wynn* was properly decided, it was still th law of this jurisdiction when he commenced his action, fo under the policy of this court enunciated in *M.A.P.* v *Ryan*, 285 A.2d 310, 312 (D.C. 1971), decisions of th United States Court of Appeals for this circuit rendered prior to February 1, 1971, "like the decisions of this court constitute the case law of the District of Columbia."[5] From this premise, he argues that the dismissal of his action on the authority of *Rodriguez* gave retroactive impact to that decision in circumstances which the Supreme Court itself had deemed unjust. He distinguishes our holding in *Dodson* and *Milligan, supra,* which also treated *Rodriguez* as controlling, on the ground that the issue of retroactivity was not specifically addressed in those opinions – as it had not been raised by the unsuccessful plaintiffs.

The problem of drawing a line between the kind of appellate decisions which should be deemed purely prospective, rather than retroactive in their effect, has been considered in several cases by the Supreme Court in recent years. The one upon which appellant primarily relies is *Chevron Oil Co. v. Huson*, 404 U.S. 97 (1971). There the court remarked that a threshold requirement for depriving a decision of retroactive effect is that such decision "must establish a new principle of law, either by overruling clear past precedent on which litigants may have relied . . . or by deciding an issue of first impression whose resolution was not clearly foreshadowed." *Id.* at 106 (citations omitted).

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[5]The *Ryan* opinion, reserved the right of this court sitting en banc, to refuse to follow such decisions. *Ryan, supra,* 285 A.2d at 312. Another well recognized exception to this principle of deference appeals to this principle of deference applied to pre-1971, decisions deiscredited by later holding of the Supreme Court, *e.g. Capitol, e.g., Capital Holding Corp. v. District of Columbia, 374 A.2d 573 (D.C. 1977).*

That factor alone is not conclusive for the court also stressed that inquiry should be made into the history and the purpose of the new rule of decision and "whether retrospective operation will further or retard its operation,' " *id.* at 106-07 (quoting *Linkletter v. Walker,* 381 U.S. 618, 629 (1965)), and whether inequity would result from retroactivity.

The plaintiff in *Chevron* was injured while working on an offshore drilling rig close to the Lousiana coast, but did not file suit against Chevron until two years after the accident.[6] During pretrial discovery, the Supreme Court published *Rodriguez v. Aetna Casualty & Surety Co.,* 395 U.S. 352 (1969), in which overruling a long line of federal decisions, it held that under the Outer Continental Shelf Lands Act, 43 U.S.C. § 1331 *et seq.* (1982), state law, rather than admiralty law, is applicable to actions based on personal injuries occurring on offshore structures. On the authority of that holding, the federal district court where the action was pending then held that Louisiana's one-year statute of limitations barred respondent's suit, but was reversed by the Court of Appeals for the Fifth Circuit.

In agreeing that *Rodriguez* should not have been applied retroactively, the Supreme Court emphasized that in addition to being a case of first impression in that court, *Rodriguez* overruled decisions clearly establishing "that admiralty law, including the doctgrine of laches, applies through the Lands Act." *Chevron, supra,* 404 U.S. at 107 (citations omitted). Hence, it could not "be assumed that

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[6]The *Chevron* case did not involve the Longshore Act, for the injured worker apparently elected to sue his employer directly insted of claiming workmen's compensation.

. . . [plaintiff] did or could foresee that this consistent interpretation of the Lands Act would be overturned." His reliance on the old law, therefore, was well-founded and consequently the dismissal of his action for untimeliness "on the basis of superseding legal doctrine . . . quite unforeseeable" was reversible error. *Id.* at 108.

In a subsequent opinion, *United States v. Johnson*, 457 U.S. 537 (1982), the Supreme Court undertook an extended review and analysis of the factors justifying the nonretroactive application of judicial opinions. It concluded that when the court has declared a rule of criminal procedure to be "a clear) break with the past," it has almost invariably found "such a 'newly minted principle' nonretroactive." *Id.* at 549 (citation omitted). In a footnote which cited *Chevron, supra,* as an example, the court observed that in the context of a civil case, the "clear break principle"; has unusually been stated as the threshold test. *Johnson, supra,* 457 U.S. at 550 n.12. We drew heavily upon these observations in *Brodis v. United States*, 468 A.2d 1335, 1337 (D.C. 1983), in refusing to set aside a conviction in a case tried prior to a novel holding of this court overruling a longstanding procedural practice.

Accordingly, the issue before us turns on the question of whether the construction of Section 33(b) by the Supreme Court in the *Rodriguez* case represented a "clear break with the past." In our opinion, it did not, for the rule of decision in *Wynn* at the time appellant's action was filed here had been undermined by intervening legislation in Congress. In the *Wynn* opinion, the court pointed out not merely the potential of conflicting interests in cases like *Czaplicki,* where there was a common insurer, but to another decision discouraging employers from suing third-party tortfeasors, *viz., Ryan Stevedoring Co. v. Pan-*

Atlantic Steamship Corp., 350 U.S. 124 (1956). There is was held that a shipowner liable for injuries to a longshoreman could recover over against the employer-stevedore for breach of the latter's implied duties of safety. Plainly this prospect of double liability would deter any assignee from suing to recover the compensation paid to the disabled employee.

Congress remedied this defect in the Act in 1972 by adopting an amendment to Section 5(b), 33 U.S.C. § 905(b), which eliminated a third party's right of indemnification from the primary employer thereby repudiating the *Ryan* doctrine. The United States Court of Appeals for the Second Circuit noted these latter changes in the Act in specificallay declining to follow the *Wynn* holding. *Rodriguez v. Compass Shipping Co., supra,* 617 F.2d at 955, 961. Moreover, even before the 1972 amendment, the only other circuit court called upon to interpret Section 33(b) expressed the view that an evidentiary showing of a conflict of interest between employee and employer-assignee was necessary to enable workers to maintain actions filed after the six-month deadline. *McClendon v. Charente Steamship Co.*, 348 F.2d 298 (5th Cir. 1965).

Since the 1972 amendments, the bar of this jurisdiction has manifested no reliance upon the *Wynn* holding.[7] In supporting plaintiffs who began actions against third persons more than six months after accepting compensation, their counsel have successfully argued that the six-month period does not start to run until a formal award is made — a point quite unnecessary to make if *Wynn* was still

[7]In *Mendes v. Johnson,* 389 A.2d 781 (D.C. 1978) (en banc), we stated that a relevant factor with respect to the application of a new rule of decision was the extent of the reliance of the parties on the old rule.

controlling law. *See Carey v. Crane Service Co.*, 457 A.2d 1102 (D.C. 1983); *Collier v. John Mendis, Inc.*, 526 F.Supp. 459 (D.D.C. 1981); *Fearson v. Johns-Manville Sales Corp.*, 525 F. Supp. 671 (D.D.C. 1981). It is also significant that in the case before us, it is not contended that the individual claimant (appellant here) placed any reliance upon the *Wynn* decision – or indeed was even aware of it – when he permitted more than six months to go by before bringing suit against appellee.

It is our opinion that *Rodriguez* was typical of numerous holdings of the Supreme Court, resolving conflicts of decision among different circuit courts of appeals on the interpretation of a specified statute. The impact of such resolutions by the highest court does not affect the rights of parties who have entered into settlements or accepted as final unappealed judgments of lower courts based on the authority of the rule of decision ultimately disapproved, but they become controlling authority for the disposition of pending cases.[8] As the Supreme Court observed in a context obviously applicable to appellant's thesis that the court below should have treated *Wynn* as controlling precedent, "[d]eviant rulings by circuit courts of appeals . . . cannot generally provide the "justified reliance' necessary to warrant withholding retroactive ap-

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[8]The same court which as handed down the *Wynn* opinion, concluded after *Rodriguez* that the 1959 and 1972 amendments had undercut even the basis for the *Czaplicki exception to Section 33(b). Accordingly, it dismissed a pending action, saying that the statute "no longer permits an employee to institute a third party action after the six month statutory window" citing with approval our memorandum opinion in Westbrook v. Hutchinson Crane Excavating Co.*, No. 82-1151 (D.C. June 30, 1983). *See Johnson v. Bechtel Associates*, 230 U.S. App. D.C. 297, 309, 717 F.2d 574 (1983) *reversed on other grounds, sub nom., Jonson v. WMATA, INFRA.*, N.9.

plication of a decision consstruing a statute as Congress intended it." *United States v. Estate of Donnelly*, 397 U.S. 286, 295 (1970).

After this appeal was first argued, appellant moved for reargument, calling our attention to a new statute enacted by Congress while this case was *sub judicie, viz.*, the Longshore and Harbor Workers' Compensation Act Amendments of 1984, Pub. L. No. 98-426, 98 Stat. 1639, approved September 28, 1984 (refferred to herein as "1984 Act"). He contended that one of the amendments in that statute overruled the Supreme Court's decision in *Rodriguez v. Compass Shipping Co., supra,* and thus deprived our own decisions in *Dodson* and in *Milligan, supra,* of precedential significance. This particular amendment, revising Section 33(b) of the Longshore Act, provides that if the employer to whom the worker's right to sue a third-party tortfeasor has been assigned (after the running of the six-month period) fails to exercise such right within ninety days after assignment, such right reverts to the worker. Such amendment – as appellant correctly pointed out – was one of those provisions in the new act which [Section 28(a)] "apply both with respect to claims filed after such [enactment] date and to claims pending on such date." Accordingly, appellant argues that although he might have lost his right to sue a third party under the old act, such right has now reverted to him, because his employer (or subrogee) allowed ninety days to elapse without commencing any action.

In order to examine the possible impact of the 1984 Act upon this case and other pending litigation in the District, we granted appellant's motion for reargument in an order also allowing a motion by the Washington Metropolitan Transit Authority (WMATA) to file an amicus brief and to participate in the argument.

If appellant's construction of the new statute is correct it would mean that a large number of employers whose assigned rights against third parties had already vested 90 days or more before the effective date of the new act, but who had not yet exercised them, would be deprived retroactively of ever being able to do so. If this was indeed the purpose of the statute, there would be serious questions about its constitutional validity.

Appellees, noting that the 1984 amendments to Section 33 also do away with priority of the employer's lien on the proceeds of a judgment against third parties, argue that the recent enactment conflicts with the Constitution, unless the words "claims pending" can be construed as limited to unadjudicated agency claims in contradistinction to actions at law pending in the courts.[9] But appellant contends that the provision he relies upon is more analogous to amendments affecting statutes of limitations, in which the doctrine of "relation back" has been successfully invoked, citing several authorities including *New York Central & Hudson R.R. v. Kenney*, 260 U.S. 340, 346 (1922).

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[9]The actual wording of the statute seems to sustain such a limited construction, for other sections which regulate the prosec ution of "claims" plainly refer to agency proceedings. But the correctness of such statutory interpretteion is clouded by language in the report of the joint conference managers with respect to other amendments, set forth in Section 4 of the 1984 Act which revised two provisions of the Longshore statute for the purpose of depriving *WMATA v. Johnson*, 104 S.Ct. 2827 (1984) of "precedential effect." Jt. Rep. of Conference managers, Daily Cong. Record H.R. 9593; Sept. 14, 1984. In explaining these amendments, the conference report also stated – presumably with regard to the intent of Section 28(a):

> The Conference substitute also provides a special effective date so that these amendments apply to pending suits. This will avoid the dismissal under WMATA of third party suits which were pending or on appeal on the date of the enactment.

We need not deal with such constitutional issues, however, for the crucial question here is whether the 1984 amendments to the Longshore Act have any relevance to this case. Appellant's injury did not occur in maritime employment. His right to compensation and to subsequent actions for damages consequently derives entirely from the District of Clumbia Workers' Compensation Act of 1928, D.C. Code §§ 36-501-502 (1973 ed.)[10] This Congressional statute in turn did make the provisions of what was then called the Longshoremen's and Harbor Workers' Compensation Act of 1927, including future amendments thereto, applicable to the injury or death of employees of persons carrying on private employment in the District,[11] But the 1928 act – one of purely local application – was expressly repealed by an act passed by the District Council in 1980, effective July 24, 1982.[12] Hence, appellees contend that amendments by Congress to the Longshore Act passed after the effective date of the repealer, have no bearing

[10]Act of May 17, 1928; 45 Stat. 600, ch. 612 § 1, D.C. Code § 36-501 (1973 ed).

[11]Despite this incorporation by reference, it was recognized that the two statutes were separate and distinct, the authority of Congress to enact each piece of legislation resting upon powers granted by different clauses in the Constitution *Gudmundson v. Cardillo*, 75 U.S. App. D.C. 230, 126 F.2d 52 (1942). The court noted that Congressional power to legislate with respect to longshoremen and other harbor workers rested on concept of admirality jurisdiction over navigable waters (the 1927 act); and upon the clause granting Congress legislative authority over the territorial "seat of government" to deal with injuries in every type of work in the District of Columbia (the 1928 act).

[12]27 D.C. Reg. 2503, 2541. Section 46 provides:

> An act to provide compensation for disability or death resulting from injury to employees in certain employments in the District of Columbia and for other purposes, approved May 18, 1928 (45 Stat. 600; D.C. Code sec. 36-501-503) is hereby repealed.

whatsoever in the rights of litigants, like appellant, who were awarded workers' compensation because of injuries incurred in land based occupations in the District of Columbia. We agree.

Such repealer was merely one provision included in a comprehensive statute which replaced the District of Columbia Workers' Compensation Law of 1928 with a new method for compensating workers disabled in private employment in the District. D.C. Code §§ 36-301 to -344 (1981); D.C. Law 3-77, July 1, 1980, 27 DCR 2503. In adopting the new act the Council divorced the local workers' compensation system entirely from the Longshore Act of 1927. It provided that claims should be filed with and adjudicated by the municipal government instead of by a Federal agency and set a scale of compensation for different kinds of disabilities substantially below the corresponding levels in the Longshore Act — conforming more closely to the schedules established by state compensation laws in such neighboring jurisdictions as Maryland and Virginia.[13]

Shortly after its passage, the enforcement of the new statute was enjoined by an order of the Superior Court in a suit brought by labor organizations. It was not until 1982 that such order was reversed by a decision of this court holding that the Council had not exceeded its legislative

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[13]At legislative hearings, the local business community made a showing that convinced the Council that construction companies, mercantile enterprises, and service industries doing business in the District were unfairly burdened by ever increasing insurance premiums charged by carriers to cover employers subject to disproportionately greater liability under the Longshore Act than under comparable state laws.

authority under the District of Columbia Self-Government Act of 1973, D.C. Code §§ 1-102 to -295 (1981).[14]

Because of the injunction, claims filed during the pendency of this litigation continued to be processed by the United States Department of Labor and governed by the old act. When the validity of the new statute was upheld, the Council by legislative resolution postponed its effective date to July 24, 1982. We subsequently held that a worker injured before this date had no rights under the new act, as such an injury was then still covered by the 1928 Act, and compensability depended on its provisions. *Garrett v. Washington Air Compressor Co.*, 466 A.2d 462 (D.C. 1983).

Appellant, pointing out that his injury also occurred before the effective date of the new act and was therefore covered by the 1928 act, incorporating the Longshore Act "including all amendments that may hereafter be made thereto,"[15] argues that he is therefore entitled to invoke the Longshore Amendments of 1984 with respect to the time limitations in law suits authorized by Section 33(b), notwithstanding the repeal of the 1928 act. In our opinion this argument flies in the face of a savings statute enacted by Congress to deal with the legal effect to be accorded a repealed statute. It provides in pertinent part:

> The repeal of any statute shall not have the effect to release or extinguish any penalty, forfeiture, or liability incurred under such statute . . . and such statute shall be treated as still remaining in force *for the purpose of sustaining any proper*

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[14]*District of Columbia v. Greater Washington Central Labor Council AFL-CIO*, 442 A.2d 110 (D.C.), *rehearing denied*, 445 A.2d 960 (D.C. 1982), *cert. denied*, 460 U.S. 1016 (1983).

[15]Act of May 17, 1928 n.10, *supra*.

> *action* or prosecution for the enforcement of such penalty, forfeiture or liability.

1 U.S.C. 109 (1982) (emphasis added).[16]

Accordingly, so far as appellant was concerned, despite the repeal of the 1928 act, his rights of action against third party tortfeasors were still preserved by the provisions of that statute. But this certainly does not mean that the liitations such statute had imposed on such rights were removed by subsequent Congressional amendments to another act.

As a result of the Council action repealing the District of Columbia 1928 Act, that act had ceased to exist by 1984, when Congress amended the Longshore Act. Had it not been for the repealer, the 1928 act would indeed have incorporated those amendments, including the revisions of Section 33 which would have benefited appellant's cause. But as the 1928 act was no longer on the books, what Congress subsequently did to the Longshore statute did not affect any rights created by such prior law.

Our conclusion on this issue is identical to that reached by three different federal trial judges in this jurisdiction, presiding over cases in which persons suing under the District of Columbia Act of 1928 contended that their rights had been enlarged because of the 1984 Congressional amemdmentts to the Longshore Act. In each instance, these judges held that such amendments had no impact upon the workers' compensation laws governing the District.

The leading case, entitled *In re Metro Subway Accident Referral,* Misc. No. 82-306, slip op. (D.D.C. Dec. 18,

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[16] 1 U.S.C. 109 is a general act of Congress applicable to the District of Columbia. D.C. Code § 49-301.

1984),[17] was an opinion and order of Judge Pratt dismissing approximately 90 lawsuits filed against the Transit Authority, decisions which had been stayed because of the pendency of appeals ultimately resolved by *WMATA v. Johnson, supra note* 9, 104 S. Ct. at 2836. Plaintiffs in these suits – for the most part tunnel workers employed by construction subscontractors – having incurred occupational disability filed claims for compensation against their immediate employers under the District of Columbia 1928 Act. The resulting compensation awards were paid by an insurance carrier from whom WMATA itself – the general contractor – had purchased a "wrap-up" policy covering all the numerous subcontractors on the subway project against potential liability for injuries to the workers they hired. This precautionary step relived such subcontractor of the necessity of taking out insurance on their own account.

Claimants filed tort actions against WMATA alleging that the Authority was negligent in permitting them to work under conditions likely to cause respiratory injuries.

Under Section 4(a) of the Longshore Act (then incorporated in the 1928 District of Columbia Act), which requires every employer to secure payment to his employees for payment compensable under the act, a contractor is under an obligation to secure payments to employees of his subcontractors unless the subcontractor has secured such payments. Section 5(a) of the act grants immunity to employers who have complied with the preceding section against additional liability.

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[17]Cited with approval and followed in *Stokes v. Hyman Construction Co.*, C.A. No. 84-1418, slip op. (D.D.C. Jan. 18, 1985) (Parker, J.); and in *Lewhew v. AFGO Engineering Corp.*, C.A. No. 81-1593, slip op. (D.D.C. Feb. 27, 1985) (Gasch, J.)

The theory of the plaintiffs was that since their own employers – the subcontractors – had not been in default of their obligation to secure payments (*i.e.*, to carry liability insurance), WMATA was sueable as a third party tortfeasor and could not claim immunity as an "employer." In the *Johnson* case, *supra,* the Supreme Court rejected this view in an opinion handed down June 26, 1984 – just before its summer recess. Soon thereafter, the United States District Court issued a rule to show cause as to why these actions and other pending actions against WMATA by plaintifs in similar situations should not be dismissed.

In the interim, because of differences between the bills passed by the Senate and House on the Longshore Act Amendments, the measure had been referred to a joint conference committee. Although there was nothing in the versions of the legislation approved by either body dealing with the issue considered in the *Johnson* case, the conferees inserted a new provision in the conference substitute which amended Section 5(a) of the Longshore Act, so as to make it clear that a general contractor who took out worker's compensation insurance for his subcontractor's employees did not gain immunity as an "employer," unless such action was triggered by an actual failure of a subcontractor to comply with his statutory duty to "secure" compensation. This meant that general contractors who had followed the course of action taken by *WMATA* were no longer immune from liability in suits brought by employees of subcontractors, for the conference report, in explaining such amendment, expressly disapproved of the Supreme Court holding in the *Johnson* case, *supra,* and noted that in law suits still pending or on appeal, such holding should not be accorded "precedential effect" –

an apparent reference to Section 28(a) of the 1984 Act mentioned earlier in this opinion.[18]

The conference substitute was passed by both branches of Congress withoiut floor debate – the motion to adopt in the Senate following brief explanations by three of the Senate conferees, none of whom alluded to the Sectdion 5(a) amendment or indeed to any possible bearing of the bill upon District of Columbia law.[19] The President approved the enrolled bill on September 27,a 1984, releasing a short explanatory statement.

Thus, later in the same year in passing upon the proposition of the plaintiff to dismissal in *Metro Subway, supra,* Judge Pratt was squarely confronted, as we have been in the appeal now before us, with the question of whether or not the 1984 amendments to the Longshore Act affected pending actdions filed under the local act of 1928. In a well-reasoned opinion, he decided that as a result of the repealer to which we have adverted, the recent Congressional legislation did not affecdt such actions, being directed solely at the various kinds of maritime employment covered by the federal act of 1927 as amended. Accordingly, deeming *WMATA v. Johnson, supra,* 104 S. Ct. at 2827, still controlling with respect to the cases in the District Court, he dismissed them, although he did remark that the joint statement of the conferees is "somewhat ambiguous as to whether Congress was thinking of the Johnson litigation or the principle embodied in the *Johnson* decision." *In re Metro Subway Accident Referral, supra,* slip op. at 7 n.11.

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[18]Joint Explanatory Statement of the Committee of Conference, Cong. Reg. H. 9598, September 1984.

[19]*See* Cong. Rec. S. 11621 to 11627, September 20, 1984.

In our view, Judge Pratt, in the absence of any wording in the new act referring to workers' compensation in the District, was fully justified in concluding that it was only the "principle" or rule of decision in *Johnson,* that had been overruled. There are numerous operations covered by the Longshore Act, *e.g.,* dry-dock overhaul of vessels, off-shore oil rights, shipbuilding, etc., which require the services of literally scores of subcontractors. Obviously the unions representing workers on such projects – and credited in the reports of the House and Senate Committees as helping to shape the new legislation[20] would scarcely regard favorably any legal doctrine having ominous overtones with respect to successful litigation against general contractors in maritime industries.

Appellant has assailed the conclusion reached in *Metro Subway* on several grounds, none of which are persuasive. He argues that because the 1984 act specifically makes certain provisions inapplicable or limited with regard to the Black Lung Act and the Outer Continental Shelf Act – statutes also incorporating by reference portions of the Longshore Act – the absence of any similar reference to the 1982 District of Columbia Act indicates that Congress intended that its amendments were also applicable to the latter. The short answer to this contention is that there was no occasion for Congress to exclude expressly from the application of provisions of the new law any statute already repealed. Congress was certainly aware of the repeal of the 1928 act, for the Council legislation accomplishing such action had been submitted to Congressional review for the statutory period of 30 legislative days, and became law without the disapproval of either branch.[21]

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[20] *See* H.R. Rep. No. 98-579, 98th Cong., p. 2; S. Rep. No. 98-81, *id.* p. 23.

[21] *See* D.C. Code § 36-345 (Supp. 1984).

Nor are we impressed by the argument that the Department of Labor, the federal agency entrusted with the administration of the Longshore Act, has indicated that the 1984 amendments are applicble to employees injured in the District of Columbia before the new local act became effective.[22] Appellant suggests that we should defer to this administrative construction. Such rule of deference with respect to administrative "expertise" is sometimes mentioned by the courts in sustainilng an agency rule or adjudication, but is never employed with respect to statutory provisions limiting the time or scope of judicial review or the institution of lawsuits, as provisions dealing with the jurisdiction of the court are not within the province of an agency to itnerpret.

An examinatioin of the 1984 act and its legislative history persuades us that Congress, in revising the Longshore statute, focused attention entirely upon difficulties encountered by maritime employers and employes under its then existing provisions. One of its major concerns was the broad scope of coverage which had resulted in overlapping claims under federal and state law. It solved this problem by erxcluding several categories of workers previously within the act, *e.g.*, employees of yachting marinas, shoreside museums and restaurants, builders of small boats, etc., leaving such persons to the coverage of state workmen's compensation laws.[23]

If a central purpose of the 1984 legislation was to remove from coverage substantial numbers of employes

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[22]Appellant relies upon published rules for adjudication promulgated by what was apparently a lower level of the department. With commendable candor, counsel for appellant informed us after oral argument that he had been mistaken in stating that the Solicitor of Labor had issued an opinion agreeing with his positioin.

[23]Jt., Conf. Rep., *supra*, Cong. Rec. II ⅝592-93, Sept. 14, 1984.

whose connection with maritime industries was too peripheral, it would be passing strange to infer that Congress meant the new act to cover persons injured in purely land based occupations. Plainly the President of the United States understood that the 1984 act affected only the maritime industry, for in giving it his approval, he stated in part:[24]

> I have today signed S. 38, the "Longshore and Harbor Workers' Compensation Act Amendments of 1984." The last amendments to this Act in 1972 expanded worker coverage and provided relatively high benefits which resulted in excessive costs. Today's legislation addresses these issues and makes important reforms in workers' compensation for injured workers, who contributed so much to our NMation's *vital maritime industry,* and their families. . . .
>
> I want to congratulate all the parties to this consensus legislation. Their efforts strike a balance between continuing to provide fair and necessary benefits for injured workers and their families and, at the same time, giving employers, insurers and the Labor Department the means to control program costs more effectively. The bill will accomplish this by clarifying the Act's coverage to exempt certain categories of workers whose work activities are *on land,* putting reasonable limits on benefits, and increasing the penalties for fraud and abuse. (Emphasis supplied).

Affirmed.

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[24] *See Statement by the President, released by White House, September 28, 1984.*

APPENDIX D

In the
Superior Court for the District of Columbia
January 8, 1986
CA No. 14192-79

JOHN D. O'CONNELL
Plaintiff

vs.

MARYLAND STEEL ERECTORS, INC.
Defendant and Third Party Plaintiff

vs.

STEELE AND MORONEY, INC.
Third Party Defendant

ORDER

This matter having come before the Court for trial and the court thereupon having entrtained a Motion to Dismiss for lack of jurisdiction and the court having reviewed the memoranda on the subject submitted by the plaintiff and defendant pursuant to the Pretrial Order, and the court having heard oral argument from all parties it is by the court this 8th day of January 1982. [*nun pro tunc*] 16th day of December, 1981

ORDERED that the Complaint herein be and the same is hereby dismissed for failure of the plaintiff to file the suit within six months of accepting workmen's compensation pursuant to a formal award as required by U.S.C.A. 33 § 933b and it is further

ORDERED that the third party complaint herein is dismissed without prejudice, as moot.

HONORABLE SYLVIA BACON

Walter J. Murphy, Jr., Esquire
703 Wheaton Plaza North Building
Wheaton, Maryland 20902

William Burgy, Esquire
2000 L Street, N.W.
Washington, D.C.

Gary W. Brown, Esquire
1625 K Street, N.W.
Washington, D.C.